IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4413 of 1990
and
CIVIL APPLICATION No 2779 of 1995

with

SPECIAL CIVIL APPLICATION No 5259 of 1990
and
CIVIL APPLICATION No 2777 of 1995

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KAMALKISHOR S DAVE & ORS.

Versus

STATE OF GUJARAT & ANR.

Appearance:

1. Special Civil Application No. 4413 of 1990

MR PV HATHI for Petitioners Nos. 1-5
MR LR PUJARI, AGP for Respondent No. 1
Respondent No. 2 SERVED

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 12/10/2004

COMMON ORAL JUDGEMENT

Both these petitions raise identical issues. Hence, with the consent of the learned advocates, these petitions are disposed of by this common judgment.

The petitioners in these petitions (six in number) hold diploma in mechanical engineering. The petitioners were selected for appointment as "Works Supervisor" (Supervisor on work-charged establishment). By orders dated 10th July, 1984 and 21st September, 1984 made by the Chairman, Selection Committee and the Superintending Engineer, Ukai Circle (Mechanical), the petitioners were appointed as "Works Supervisor". By orders dated 8th September, 1988 and 11th December, 1985 made by the Chairman, Selection Committee and the Superintending Engineer the petitioners were appointed as "Supervisor" on temporary establishment. By orders dated 5th June, 1990 and 3rd July, 1990 the petitioners were reverted to work-charged establishment as "Works Supervisor". Feeling aggrieved, the petitioners have preferred the present petitions.

Learned advocate Mr.Hathi has appeared for the petitioners. Mr.Hathi has submitted that the service conditions of Government servants appointed on work-charged establishment and those employed on temporary establishment are quite different. Apart from the pay, the appointment on temporary establishment entail promotional chances and other service benefits which are not available to work-charged servants. Thus, reversion of the petitioners to work-charged establishment would have civil consequences in as much as the petitioners would lose several service benefits which they had been enjoying on the temporary establishment. Hence, the order of reversion to the work-charged establishment called for opportunity of hearing. In the present case, the petitioners had not been given opportunity of hearing or to show-cause against the intended reversion. Thus, the impugned orders have been made in contravention of principles of natural justice. The said orders, therefore, require to be quashed and set-aside on that ground alone. Mr.Hathi has submitted that the appointment of work-charged servants on

temporary establishment was governed by Government Resolutions and Circulars. The petitioners' appointment on temporary establishment was made in consonance with the said Resolutions and Circulars after due selection by the Selection Committee. Therefore also, the impugned orders of reversion were unwarranted and illegal. He has submitted that the respondents were estopped from reverting the petitioners to work-charged establishment as the petitioners had been enjoying the status of temporary servants and the consequential service benefits for considerably long time. In support thereof he has relied upon the judgments in the matters of Dalsukhbhai Trikambhai Parmar & others v/s. State of Gujart & others [21 GLR 939]; of Reserve Bank of India & another v/s. C.D.Chauhan & others [1994(1) GLH 1]; of Vipul S.Baxi & others v/s. The State of Gujarat and others [1998 GLT 228] and of A.R.Pandya v/s. State of Gujarat and another [1996(2) GLH 623].

Learned AGP Mr.Pujari has contested the petitions. He has submitted that the appointment to the post of "Supervisor" on temporary establishment is governed by the relevant recruitment rules. The said rules do not provide for appointment or absorption of "Works Supervisor". Hence, the appointment of the petitioners as "Supervisor" on temporary establishment was contrary to the statutory recruitment rules, illegal and void-ab-initio. He has also relied upon the Government Resolution dated 17th June, 1978. He has submitted that the said Resolution specifically provided that "Works Supervisor" shall not have any claim on the post of "Supervisor" on regular establishment unless he comes through direct selection as per the recruitment rules.

The State Government has, in exercise of powers conferred by the proviso to Article 309 of the Constitution of India and in supersession of all existing rules made in that behalf, made the rules to provide for regulating recruitment to the post of Supervisor (Mechanical) in the Subordinate Service Class-III under the Irrigation Department named as the Supervisor (Mech.) in the Subordinate Service, Class-III Recruitment Rules, 1979 (hereinafter referred to as "the Rules of 1979"). Rule 2 of the Rules of 1979 provides that "...Appointment to the post of Supervisor (Mech.) in the Subordinate Service Class-III under the Irrigation Department shall be made by direct selection." By Government Resolution dated 17th June, 1978 the State Government has re-designated the "Work-charged Junior Engineers" as "Works Engineers" and "Work-charged Supervisors" as

"Works Supervisors". It further provides that, "the authorities competent to recruit persons on work-charged establishment may make appointment on such posts as per requirement of the project works on a purely temporary basis, but it should be made expressly clear in every appointment order that as soon as the work is completed or the requirement is over, the services of the persons appointed will be liable to be terminated without assigning any reason. The Works Engineers/Works Supervisors shall also not have any claim on the posts of Junior Engineers/Supervisors on regular establishment unless they come through direct selection as per Recruitment Rules of the respective posts." On perusal of the aforesaid Government Resolution and the Rules of 1979, it is evident that the Supervisors appointed on work-charged establishment can have no claim for appointment on regular establishment except in accordance with the recruitment rules. The Rules of 1979 provide for one and only one mode of appointment i.e. by direct selection. The said Rules do not permit absorption of "Works Supervisor" or appointment of "Works Supervisor" as "Supervisor". Admittedly, the petitioners, Works Supervisors, were not appointed as Supervisor (Mech.) in accordance with the Rules of 1979. In my view, therefore, the appointment of the petitioners as Supervisor (Mech.) made by the Superintending Engineer was in contravention of the statutory recruitment rules, illegal and void-ab-initio. There being no right to appointment as Supervisor (Mech.), the petitioners cannot have a legitimate grievance against their reversion to their substantive cadre of "Works Supervisor". The appointment of the petitioners as "Supervisor (Mech.)" being void-ab-initio, the impugned order of reversion was a mere consequence. The same not being punitive in nature, neither the petitioners were required to be given opportunity of hearing nor the opportunity to show-cause.

In the matter of Dalsukhbhai Trikambhai Parmar & others (supra), the question was that of inter se seniority amongst the work-charged employees in Public Works Department of the State Government and such employees appointed in permanent establishment. The Court has, in paragraph 7 of the judgment, discussed the distinctive factors which distinguish the regular establishment to that of work-charged establishment. Mr.Hathi has particularly relied upon these distinctive factors. He has submitted that the reversion of the petitioners to work-charged establishment would entail loss of service benefits which are available in regular establishment.

In the matter of Reserve Bank of India & another (supra), the question was that of regularisation of daily rated employees known as tikka mazdoors as mazdoors. The said judgment shall have no applicability to the facts of the present case.

In the matter of Vipul S.Baxi & others (supra), termination of service of the petitioners after five years on the ground that their names were not sponsored by the employment exchange was considered improper.

In the matter of A.R.Pandya (supra), the question was that of reduction in pay-scale by an administrative order. The court held that, "...When it is admittedly not a legislative action and orders passed in the present case affects the pay of the petitioner the respondent failed to give out any justification in the present case why they have not complied the principles of natural justice. It is well settled law that where an administrative order affects the right of the citizens the natural justice has to be complied with."

As I have held that the petitioners' appointment as "Supervisor (Mech.)" was made in contravention of statutory rules framed under Article 309 of the Constitution of India, illegal and void-ab-initio, the necessary consequence should be reversion of the petitioners to their substantive cadre of "Works Supervisor". Hence, in my view, the impugned orders reverting the petitioners to their substantive posts of Works Supervisor should not be vitiated on the ground that the petitioners were not given opportunity of hearing or to show-cause.

The petitions are dismissed with cost. Rule nisi issued in each petition is discharged. Interim orders stand vacated. Civil Applications stand disposed of. Registry shall maintain copy of this order in each petition.

(Ms. R.M.Doshit, J.)
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